Claims 1-33 are pending in the application. Claims 1, 12, and 23 are amended. Support for the amendments can be found in the dependent claims as originally filed. No new matter is added. Reconsideration and allowance of the claims is requested.

Applicants do not concede that the originally filed claims are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are included only to facilitate expeditious prosecution. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications.

Applicants thank the examiner for the courtesy shown in issuing a further non-final office action in reply to Applicant's previous response to office action.

I. Objection to the Drawings

The examiner objected to Figures 1 and 3 under the assertion that the figures should be labeled as "prior art." With respect to Figure 1, Applicants point to the amended drawings accepted by the examiner in the response to office action filed on July 20, 2007. In the amended drawings, Figure 1 is labeled as "prior art." Therefore, this objection is overcome with respect to the objection to Figure 1.

With respect to the objection to Figure 3, Applicants have included with this response a replacement drawing sheet and an annotated sheet showing that Figure 3 is labeled as prior art. Therefore, the objection to Figure 3 should also now be overcome.

II. 35 U.S.C. § 103: Asserted Obviousness

The examiner rejects claims 1-33 as obvious over Applicant's Admitted Prior Art (hereinafter "*AAPA*" in view of the commercial product HP OpenView as documented in *Nathan Muller*, Focus on OpenView: A Guide to Hewlett-Packard's Network and Systems Management Platform, CBM Books, 1995 (hereinafter "*Muller*"). This rejection is respectfully traversed. In rejecting claim 1, the examiner states that:

> Applicant presents the network environment as being in accordance with prior art. The network technology the Applicant has deployed their invention is considered admitted prior art (known at the time of filing). The need statement the Applicant is located on page three of the Specification and reads as follows:
>
> The following is from page 3 of the' Specification "A need exists for a method, system, and computer program product for automatically distributing and installing software packages throughout a multi-tiered computer network, such as a four-tier CORBA architecture."

The rejection is the installation of the HP OpenView product in the admitted prior art network environment. The portions of the reference relied upon teach the Software Distribution system, the ability to configure nodes and the ability of HP to interact and perform functions on different tiers.

The last paragraph of page 184, the strategy of using the universal management processes is covered. In other words the same abilities to access remote tiers in the network that enable the system management are also used for software distribution.

Applicant is held to the level of ordinary skill in the art and to be aware of all pertinent prior art (Customer Accessories, Inc. v. Jeffrey-Allan Ind. Inc., 'I USPQ2d 1196 (Fed Cir 1986). Applicant should specifically bring to the attention of the USPTO, Why Hewlett Packard's OpenView product can not be deployed in the multi-tiered environment (APA) to achieve the claimed invention.

Claim 1

A method in a data processing system for automatically distributing and installing software file packages throughout a multi-tiered computer architecture hierarchy, said hierarchy including a global tier, a hub tier that is below said global tier, and a target tier that is below said hub tier, said method comprising the steps of:

receiving, within a global computer system that is located in said· global tier, a distribution request to distribute a file package to a target computer system that is located in said target tier; starting, by said global computer system, a distribution process in said hub computer system; distributing said file package and an installation process from said global computer system to said hub computer system that is located in said hub tier; automatically distributing said file package and said installation process to said target computer system from said hub computer system utilizing said distribution process; and

automatically installing, by said target computer system, said file package utilizing said installation process.

Rejection for Claim 1

APA teaches the multi-tiered network environment in the claimed invention. And HP teaches a Systems Management Platform that is intended to run and support multitiered environments.

OpenView teaches automatically distributing and installing software file packages (HP, pages 184, Synchronization and Change Orchestration) throughout a multi-tiered computer .architecture hierarchy (HP, Supports many topologies pages 210-216, 229-230, 246-250) , said hierarchy including a global tier (HP OpenView is a global tier - ability to manage one or more Hubs - see Chapter 12 - page 245), a hub tier (HP, chapter 12 - Hubs) that is below said global tier, and a target tier that is below said hub tier (As per above and HP; pages 2 - 18), said method comprising the steps of:

receiving, within a global computer system that is located in said global tier, a distribution request to distribute a file package to a target computer system that is located in said target tier (HP, pages 179 - 182 and Chapter 12 pages 245 - 247 see Figures and pages 255262); starting, by said global computer system, a distribution process in said hub computer system; distributing said file package and an installation process (HP, pages 182 - Software Management) from said global computer system to said hub computer system that is located in said hub tier (HP, Chapter 12) ; automatically distributing said file package and said installation process to said target computer system from said hub computer system utilizing said distribution process (as per the cited sections above); and automatically installing, by said target computer system, said file package utilizing said installation process (HP, page 181, Target System and page 205, ability to manage software on stations).

It is APA who teaches a multi-tiered environment employing CORBA. And it is HP who teaches a commercial System Management Platform product that supports a plurality of tiers and environments including CORBA (HP, page 273). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to combine APA and HP, because the efficiency of the product to be able to keep hardware, software and firmware up to date, "The current market success of HP's OpenView is apparent by the many internetworking vendors who use this network management system as the framework for managing bridges, routers and hubs. OpenView is installed on more than 35,000 networks worldwide, and it is expected to eclipse NetView in 1995, making it the premiere network management system. In addition, key portions of OpenView for the basis of the Open Software Foundations (OSF) Distributed Management Environment (DME). (HP, Preface).

Office action of October 22, 2007, pp. 4-6.

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). The prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). In determining obviousness, the scope and content of the prior art are... determined; differences between the prior art and the claims at issue are... ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or non-obviousness of the subject matter is determined. *Graham v. John Deere Co.*, 383 U.S. 1 (1966). "Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue." *KSR Int'l. Co. v. Teleflex, Inc.*, No. 04-1350 (U.S. Apr. 30, 2007). "*Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some*

articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. Id. (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006))."

Claim 1 as amended is as follows:

> 1.   (Currently Amended) A method in a data processing system for automatically distributing and installing software file packages throughout a multi-tiered computer architecture CORBA hierarchy, said hierarchy including a four-tier CORBA network that includes a global tier functioning as a CORBA ORB, a hub tier that is below said global tier, a target tier that is below said hub tier, and a gateway tier between the hub tier and the target tier, said method comprising the steps of:
>> receiving, within a global computer system that is located in said global tier, a distribution request to distribute a file package to a target computer system that is located in said target tier;
>> starting, by said global computer system, a distribution process in said hub computer system;
>> distributing said file package and an installation process from said global computer system to said hub computer system that is located in said hub tier;
>> automatically distributing said file package and said installation process to said target computer system from said hub computer system utilizing said distribution process; and
>> automatically installing, by said target computer system, said file package utilizing said installation process.

II.A.   Response to Rejection, Generally

The Examiner appears to summarize the rejection as follows: "The rejection is the installation of the HP OpenView product in the admitted prior art network environment. The portions of the reference relied upon teach the Software Distribution system, the ability to configure nodes and the ability of HP to interact and perform functions on different tiers." Office action of October 22, 2007, p. 4. The examiner also states that, "Applicant should specifically bring to the attention of the USPTO, Why Hewlett Packard's OpenView product can not be deployed in the multi-tiered environment (APA) to achieve the claimed invention." Office action of October 22, 2007, p. 4.

However, the examiner has the burden of proof turned on its head. The Examiner bears the burden of establishing a *prima facie* case of obviousness based on prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). In the case at hand, the examiner has the burden to show that one of ordinary skill in the art has the *technical skill* to combine the references.

Applicants have, for the sake of facilitating prosecution only, amended the claims to specify the four-tier CORBA ORB network. As described in the previous response to office action, and further below, neither *AAPA* nor *Muller* take into account the global tier in a CORBA ORB environment, as is

reflected in claim 1. The examiner may not assume, as the examiner has, that software distribution (as in *Muller*) can be applied to a global tier in a CORBA environment, as in claim 1.

As stated in the background of the specification, which is quoted by the examiner, "A problem may arise in a CORBA environment because the environment is limited by the CORBA specification to being only a three-tier CORBA ORB system." Thus, a global system (as is claimed) is *qualitatively different* than a *three-tier* CORPA ORB system. For this reason, the four-tier CORBA ORB system of claim 1 is *qualitatively different* than the software distribution system presented in *Muller*.

Because the systems of *AAPA* and *Muller* are qualitatively different, as shown in *AAPA* itself, one of ordinary skill could not technically combine the references to achieve the claimed invention. For similar reasons, one of ordinary skill would have no reason to combine the references to achieve the claimed invention. Thus, no reason can be stated to achieve the legal conclusion that claim 1 is obvious in view of the references under the standard of *KSR Int'l*. Accordingly, no *prima facie* obviousness rejection can be stated using a combination of these references.

II.B.   Response to Rejection, Specifically
II.B.1. The Proposed Combination Does Not Teach or Suggest all of the Features of Claim 1

The combination of *Muller* and *AAPA* does not anticipate claim 1 because the proposed combination does not teach each and every feature as recited in claim 1. For example, *Muller* does not teach distributing and installing software file packages throughout a multi-tiered computer architecture hierarchy, said hierarchy including said hierarchy including a four-tier CORBA network that includes a global tier functioning as a CORBA ORB, a hub tier that is below said global tier, a target tier that is below said hub tier, and a gateway tier between the hub tier and the target tier, as recited in claim 1. The examiner asserts otherwise, relying on *AAPA* to teach CORBA ORBs and *Muller* to teach software distribution throughout tiered networks.

Muller, pages 2-8 discusses the OpenView Framework. The OpenView Framework includes system management tools for facilitating central monitoring and control of multiple systems (*Muller*, p. 2). Additionally, the OpenView Framework includes Network management tools for integrating LAN and WAN multi-vendor environments under central control (*Muller*, p. 3). The OpenView Framework also includes OpenView Components for providing an infrastructure for the management of computing environments (*Muller*, p. 3). The OpenView Framework also includes presentation services, such as user displays (*Muller*, p. 4). Furthermore, the OpenView Framework includes Distributed Communication Infrastructure to make it possible for management applications to access the services of OpenView across a network. Lastly, the OpenView Framework includes event management and data management services. Event management services gather and forward such events as node failures and application changes,

while data management services allow information about network elements to be stored in a common location (*Muller*, p. 6).

Muller teaches that the OpenView Framework consists of tools for managing and monitoring the network. However, *Muller* does not teach distributing and installing software file packages throughout a multi-tiered computer architecture hierarchy, said hierarchy including said hierarchy including a four-tier CORBA network that includes a global tier functioning as a CORBA ORB, a hub tier that is below said global tier, a target tier that is below said hub tier, and a gateway tier between the hub tier and the target tier as recited in claim 1.

Additionally, *AAPA* does not teach or suggest this claimed feature. *AAPA* only states that, "A problem may arise in a CORBA environment because the environment is limited by the CORBA specification to being only a three-tier CORBA ORB system." Thus, *AAPA* does not teach or suggest the claimed four-tier CORBA ORB system. Accordingly, the proposed combination of references, considered as a whole, does not teach or suggest this claimed feature. Therefore, under the standards of *In re Royka*, no *prima facie* obviousness rejection can be stated against the claims using a combination of *AAPA* and *Muller*.

II.B.2. No Rational Reason Can Be Stated to Achieve the Legal Conclusion of Obviousness

Additionally, no rational reason can be stated to achieve the legal conclusion of obviousness in view of the references, considered as a whole. As shown above, *AAPA* specifically identifies problems associated with distribution of software in a four-tier CORBA ORB system. *Muller* fails to address these particular technical problems. Therefore, one of ordinary skill in the art *lacks the technical skill* to combine the references to achieve the claimed invention. The burden is on the examiner to prove otherwise. Because one of ordinary skill in the art lacks the technical skill to combine the references, no rational reason can be stated to achieve the legal conclusion of obviousness of claim 1 in view of these references.

Still further, one of ordinary skill would not consider claim 1 obvious in view of the references considered as a whole. Because AAPA identifies a specific problem with software distribution in four-tier CORBA ORB systems, and because *Muller* does not address this particular technology, one of ordinary skill in the art would consider the two references to be un-combinable. Even if the references would be considered combinable, one of ordinary skill in the art would lack the ability to implement the ideas presented in *Muller* with the CORBA ORB system presented in *AAPA*. Accordingly, again, no reason exists to achieve the legal conclusion of obviousness of claim 1 in view of these two references, considered as a whole. Therefore, under the standards of *KSR Int'l.*, no *prima facie* obviousness rejection an be stated against claim 1 in view of *AAPA* and *Muller*, considered as a whole.

II.C. Remaining Claims

Claims 2 through 33 all contain features similar to those presented in claim 1 as amended. Thus, at least for the reasons presented above, no *prima facie* obviousness rejection can be stated against claims 2 through 33. Accordingly, the rejection should be overcome.

III. Conclusion

The subject application is patentable over the cited references and should now be in condition for allowance. The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: January 22, 2008

Respectfully submitted,

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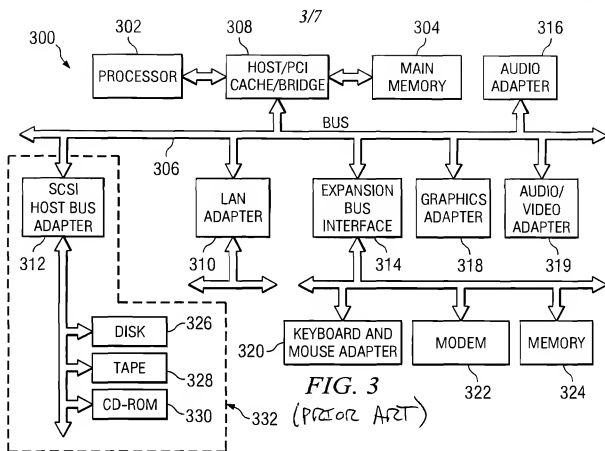(972) 385-8777
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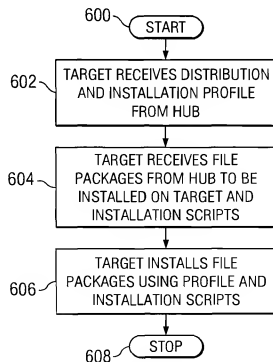|				
302	308		304	316
PROCESSOR	HOST/PCI CACHE/BRIDGE		MAIN MEMORY	AUDIO ADAPTER

BUS

306

SCSI HOST BUS ADAPTER	LAN ADAPTER	EXPANSION BUS INTERFACE	GRAPHICS ADAPTER	AUDIO/VIDEO ADAPTER

312

310   314   318   319

DISK — 326
TAPE
CD-ROM — 330

328

332 (PRIOR ART)

KEYBOARD AND MOUSE ADAPTER   320

MODEM   322

MEMORY   324

FIG. 3

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600 — START

602 — TARGET RECEIVES DISTRIBUTION AND INSTALLATION PROFILE FROM HUB

604 — TARGET RECEIVES FILE PACKAGES FROM HUB TO BE INSTALLED ON TARGET AND INSTALLATION SCRIPTS

606 — TARGET INSTALLS FILE PACKAGES USING PROFILE AND INSTALLATION SCRIPTS

608 — STOP

FIG. 6